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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 204

CONTINENTAL SOUTHERN LINES, INC., PETITIONER

v.

CIVIL AERONAUTICS BOARD, OZARK AIRLINES, INC., AND SOUTHERN AIRWAYS, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE CIVIL AERONAUTICS BOARD IN OPPOSITION

OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit (R. 747) is not yet reported. The orders and findings of the Civil Aeronautics Board in the *Parks Investigation Case* (R. 233) and in the *Reopened Mississippi Valley and Southeastern States Cases* (R. 706) are re-

ported at 11 C.A.B. 779 and 11 C.A.B. 979, respectively.

JURISDICTION

The judgment of the Court of Appeals was entered on April 17, 1952 (R. 746). The petition for a writ of certiorari was filed on July 16, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTIONS PRESENTED

1. Whether the provisions of Section 408 relating to the acquisition of control of an air carrier by a surface carrier apply to the situation where a subsidiary of a surface carrier seeks certification as an air carrier.

2. Assuming an affirmative answer to the first question, whether the Board was correct in denying petitioner's applications for certification in the light of the following circumstances found by the Board:

(a) Petitioner had been put on notice that its control relationships were directly relevant to the question of its certification, but had failed to make an adequate showing on the basis of which the character and effect of those relationships could be evaluated;

(b) Immediate service was required by the public convenience and necessity and there were other applicants ready and qualified to render it.

3. Assuming a negative answer to the first question, whether the Board was nonetheless correct in

denying petitioner's applications, in the light of the circumstances described above (2(a) and (b)), because petitioner's surface carrier affiliations were, in any event, factors to be considered under Section 401 (the certification section) in determining whether it would be in the public interest to certify petitioner.

4. Assuming that petitioner was properly held to be unqualified for certification, whether it has standing to challenge the qualifications of the successful applicants.

STATUTE INVOLVED

Section 401(d)(1) of the Civil Aeronautics Act (52 Stat. 973, as amended, 49 U.S.C. 401, *et seq.*) provides:

> The Authority [Board] shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Authority [Board] hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied.

Section 408 provides in part:

> (a) It shall be unlawful unless approved by order of the Authority [Board] as provided in this section—
>
> * * * * *

(5) For any air carrier or person controlling an air carrier, any other common carrier, or any person engaged in any other phase of aeronautics, to acquire control of any air carrier in any manner whatsoever;

* * * * *

(b) * * * *Provided further,* That if the applicant is a carrier other than an air carrier, or a person controlled by a carrier other than an air carrier * * * the Authority [Board] shall not enter such an order of approval unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than an air carrier to use aircraft to public advantage in its operation and will not restrain competition.

The above provisions are fully set forth, together with other portions of the statute relevant to this proceeding, in the Appendix, *infra,* pp. 19-23.

STATEMENT

This case arises out of two separate administrative proceedings in both of which petitioner unsuccessfully applied for a certificate of public convenience and necessity. Petitioner contended before the Court of Appeals (a) that its applications were improperly denied by the Board, and (b) that the successful applicants (both of which instituted the authorized operations promptly after certification and are presently conducting them) were not properly qualified to render the service. The

Court of Appeals' opinion disposed of both cases (Nos. 10811 and 10812).

Case No. 10811 involved the Board proceeding designated as the *Parks Investigation Case.* In that case, the Board determined that the certificate of public convenience and necessity previously awarded to Parks Air Lines should be terminated because of that carrier's failure to inaugurate service, and, acting pursuant to the provisions of Section 401 of the Civil Aeronautics Act relating to certification of air carriers (*infra,* pp. 19-20), it awarded two of Parks' routes to Ozark Airlines (R. 277-280A). Petitioner, a motor bus company conducting operations in the South Central portion of the United States (R. 216B) was an applicant for these routes along with Ozark and others. In denying petitioner's application, the Board pointed out that "a second bus company [Transcontinental] has acquired control of Continental Southern, and is in fact, one of Continental Southern's expected sources of capital" (R. 248).[1] The Board further stated (R. 248):

> This acquisition must be approved by the Board under section 408 of the Civil Aero-

[1] On December 22, 1948, well in advance of the hearings in both of the Board proceedings here involved, Transcontinental entered into a contract whereby it was to acquire all of Continental Southern's outstanding stock (R. 401). Interstate Commerce Commission approval of the stock acquisition was granted on August 19, 1949 (R. 401), prior to the hearing in the *Parks Investigation Case.* With this approval, as stated by the Court of Appeals, "Continental became part of a great surface transportation empire whose affiliated routes stretch from Portland, Oregon to Los Angeles and Chicago" (R. 751, see also R. 216C).

> nautics Act in the event Continental Southern should be certificated as an air carrier herein. The necessity for such approval has been recognized by the parties who filed an application for approval after the hearing in this proceeding.

The above-mentioned application for approval of the control relationship was not filed until March 7, 1950, several months after the hearing in the *Parks Investigation Case* had been concluded (R. 397-401), although petitioner had been put on notice and had agreed, at the prehearing conference of July 18, 1949, that the issue of control was directly related to the problem of certification (R. 35-37). Recognizing its failure to bring on for contemporaneous hearing with its application for a certificate of public convenience and necessity an application for approval of the control relationship, petitioner urged, in its brief to the Board, "that the Section 401 issue may be considered separately from the Section 408 question" (R. 231).[2] Recognizing, moreover, that "naturally the Board would not want to issue a certificate to Continental Southern . . . if it suspected that the acquisition application would be denied" (R. 232), petitioner

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[2] The customary procedure followed by applicants before the Board which, upon certification, will fall within the purview of Section 408, is to file an application for approval of the 408 relationship to be heard with the certificate proceeding under Section 401. Petitioner initially recognized that a subsequent Section 408 proceeding would be required in its case (R. 231, 232).

urged that the evidence introduced in the Section 401 or certification proceeding indicated that the Board would be able to approve the control relationship when that issue was presented in a subsequent Section 408 proceeding. On this point, the Board held (R. 249):

> We, of course, cannot now decide this question without a full record before us. However, it is apparent on the face of the situation that the 408 proceeding would involve substantial questions and that there is a serious doubt as to whether or not the control of Continental Southern by Transcontinental could legally be approved.

On June 13, 1950—after argument was completed and the proceeding stood submitted to the Board—petitioner and Transcontinental filed an application under Section 401(i) of the Act (*infra*, p. 20) for approval of the transfer to Transcontinental of any certificate of public convenience and necessity which might be issued to Continental Southern (R. 402-421). The Board held that this application did not affect the issues presented and could not serve to avoid the impact of Section 408 (R. 250-251).

Accordingly, and upon findings (1) that serious doubt existed as to whether the control of petitioner by Transcontinental could be approved, (2) that it was doubtful that petitioner would initiate operations until after the control issues were re-

solved, if at all,[3] (3) that those issues could not be decided on the record made, (4) that, in any event, petitioner was no better qualified than the other applicants, and (5) that there was immediate need for the institution of service, the Board denied petitioner's application and granted the certificate of public convenience and necessity sought by petitioner to another applicant, Ozark Airlines (R. 249-254).

Case No. 10812 involved the *Reopened Mississippi Valley and Southeastern States Cases.* The Board's order in that proceeding authorized an amendment of Southern Airways' existing certificate of public convenience and necessity so as to permit it to operate between Memphis and New Orleans, and between Columbus, Miss., and Mobile, in each instance via specified points, until February 8, 1952 (R. 736, 739-741).[4] Since the routes

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[3] The Board pointed out that if it was subsequently unable to approve the control of petitioner by Transcontinental (R. 249)

> we would then be legally required to order Transcontinental to divest itself of control of Continental Southern. There is no assurance that Transcontinental would take this action. If it did not, and preferred to retain its control of Continental Southern purely as a bus operation, our action in certificating Continental Southern in this proceeding would have been futile. Moreover, under the circumstances we can have no assurance that Continental Southern or its backer Transcontinental would be willing to make the substantial investments necessary for immediate activation of any of the Parks routes pending the outcome of the 408 proceeding.

[4] An application for renewal of this certificate was timely filed prior to the date upon which it otherwise would have expired, and proceedings are in progress before the Board upon the renewal application. Under the provisions of section 9(b) of the Administrative Procedure Act (60 Stat. 242,

approved were less than 800 miles in length and the traffic potential over them was low, the Board found that the performance of the additional services could be justified only as an extension of an existing air transportation system (R. 724). Finding further that Southern Airways already conducted extensive operations in the territory involved, that the new routes would be integrated with its existing routes, that the effect of such integration would be a strengthening of Southern's system, and that Southern was fit, willing and able to perform the service, the Board concluded that it should be awarded the routes and that the applications of the other parties to the proceeding should be denied (R. 727-731). In so far as petitioner is concerned, the Board held that the considerations relating to surface carrier control, discussed at length in the *Parks Investigation Case* concurrently decided, furnished a separate and additional ground for denying its application (R. 725-726).

The Court of Appeals affirmed the orders of the Board in both proceedings upon the issues relating to petitioner's surface carrier control. It held (1) that the acquisition of petitioner by Transcontinental fell within the purview of Section 408 (R. 751);[5] (2) that, irrespective of whether the

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5 U.S.C. 1008(b)), the filing of this application had the effect of extending the life of the certificate until determination by the Board thereon. After that determination, probably in the fall of this year, Case No. 10812 will be moot.

[5] Prettyman, J., concurred in the result and opinion except as to this first point, stating (R. 758): "I concur in the result and also concur in the opinion except in so far as it involves

control relationship between Transcontinental and Continental Southern would have to be approved in a technical 408 proceeding, the Board, in exercising the certification power, was certainly required to weigh as elements of the public interest the effects of the proposed surface carrier participation in the air transportation involved, *i.e.*, was bound to consider the general policies and criteria which are reflected in Section 408 (R. 752, 756, 757); and (3) that, although petitioner was put on full notice that its affiliation to Transcontinental was material to the issue of certification (R. 755), it nonetheless failed to make a record upon which it could be determined that the entry of the extensive Transcontinental bus interests into the air transportation industry was consistent with the public interest or susceptible of Board approval.[6]

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matters discussed in my dissent in No. 10630, *National Air Freight Forwarding Corp., et al.* v. *Civil Aeronautics Board*, decided April 10, 1952."

In the *National Air Freight Forwarding* case, the Court of Appeals had held that the "process of certification brings the control relationships between the newly certificated carrier and its [surface carrier] parent within § 408" (slip opinion, p. 4). Judge Prettyman dissented, being of the view that Section 408 was not technically applicable to the relationship existing between a prior acquired subsidiary and its parent upon certification of the subsidiary. He agreed in that case, however, that "even if . . . the terms of Section 408 do not apply to the creation of a wholly-owned subsidiary and its subsequent application for a certificate, nevertheless the policy of that Section must be included as one of the elements of the public interest in the consideration of the [certificate] application under Section 401" (slip opinion, p. 20).

[6] The Court of Appeals summarized the state of the record on this point as follows (R. 753-754):

> It is true that the record contains general references to the desirability of integrating Continental's air services with Transcontinental's bus operations, and evidence that

The Court further held (R. 756):

> Having correctly decided that under all the circumstances Continental could not furnish the immediate service which the public convenience and necessity required, the Board was not compelled to decide whether Continental was otherwise more fit, willing and able than the other applicants. Hence we need not consider Continental's challenge of the Board's findings on the qualifications of the successful applicants. *Simmons* v. *Federal Communica-*

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management of the two enterprises would be coordinated to some extent. The adequacy of such reference is questionable, however, when, as here, one witness who spoke of integration admitted that he had not studied "in too much detail" "the coordination between the Transcontinental Bus Line routes and the routes proposed in the area" and another stated that he was "not familiar with the surface carrier operations of Southern Bus Lines and its affiliated companies," and that the applicant's cost and income estimates did not take into account the effect, if any, which integrated operations would have. Nor does it appear from the record to what extent it would be possible to maintain joint advertising, ticket sales, property protection and maintenance and the like between an air line operating in a few Midwestern states and a bus system whose routes blanket one fourth of the nation. Moreover, it should be noted that the Board had nothing before it on which it could determine whether Transcontinental itself was controlled by any surface carriers.

In light of so bare a record, we can hardly insist that the Board should have found it likely that, in the words of § 408(b), Transcontinental's acquisition of Continental "will promote the public interest by enabling [Transcontinental] to use aircraft to public advantage in its operation and will not restrain competition." With Transcontinental in the picture, it is not unfair to say that Continental's proposal looked like an attempt to add a very big dog to a very small tail. We do not think the Board was required, in effect, to license the dog without knowing how serious would be its bite.

See also R. 752, 756-758.

tions Commission, 79 U.S. App. D.C. 264, 145 F. 2d 578 (1944).

ARGUMENT

The petition for certiorari discloses no basis whatever for questioning either of the following ultimate findings of the Board, both of which have been examined and approved by the Court of Appeals:

(a) That petitioner, although placed on notice, failed to make an adequate record upon which the Board could evaluate the significance of its control relationships;

(b) That public convenience and necessity required that the air transportation service which the various applicants were seeking authority to perform be promptly initiated.

Perforce, therefore, the petition must fail unless it should be concluded that the Board and the Court of Appeals erred in holding that the issue of control was relevant to the question of Continental Southern's applications for certification. Respondents believe that there is no serious question that, under the statute, the issue of control was material. There is no conflict of decisions on the point.

I.

A. Section 408 (*infra,* pp. 20-22), which relates generally to consolidation, merger and the acquisition of control, provides, *inter alia,* that it shall be unlawful, unless approved by order of the Board,

> For any air carrier or person controlling an air carrier, *any other common carrier,* or any person engaged in any other phase of aeronautics, to acquire control of any air carrier *in any manner whatsoever.* [Section 408(a)(5); emphasis added.]

Section 408(b) sets forth the procedure which shall be followed in applying for Board approval of acts circumscribed by Section 408(a). It then explicitly declares, in a proviso, that, "if the applicant is a carrier other than an air carrier . . . the Authority [Board] shall not enter . . . an order of approval unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than an air carrier to use aircraft to public advantage in its operation and will not restrain competition."[7]

Concededly, Transcontinental is a common carrier controlling petitioner. The Board accordingly concluded that if petitioner were certificated as an air carrier, Transcontinental would *eo in-*

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[7] The Board has construed the proviso to Section 408(b) above quoted to mean that it may not approve acquisition of control of an air carrier by a surface carrier unless (1) such acquisition is in the public interest, (2) the air carrier operations will be auxiliary or supplemental to the acquiring surface carrier's operations, and (3) such acquisition will not restrain competition. See *American President Lines, et al., Petition,* 7 C.A.B. 799; *American Export Lines—Control,* 3 C.A.B. 619, 4 C.A.B. 104; *Acquisition of TACA, S.A., by American Export Air,* 3 C.A.B. 216.

This same construction by the Interstate Commerce Commission of analogous provisions of the Motor Carrier Act has been approved by this Court. *United States* v. *Rock Island Motor Transit Co.,* 340 U.S. 419; *United States* v. *Texas and Pacific Motor Transport Co.,* 340 U.S. 450.

stante obtain control of an air carrier within the meaning of Section 408, and it would thereupon be necessary to determine in a proceeding for that purpose whether such control was consistent with the policies expressed in Section 408. Petitioner, on the other hand, would limit Section 408 to the situation in which a surface carrier proposes to acquire control of an established air carrier, denying it force where control of a subsidiary was acquired *before* the subsidiary became an air carrier. It argues that, in the instant case, there was no necessity for Section 408 proceedings either contemporaneously with or subsequent to the certification proceedings (Pet. pp. 13-14).

The construction which petitioner seeks has heretofore been rejected both by the Court of Appeals for the Second Circuit and by the Court of Appeals for the District of Columbia Circuit. *Pan American Airways Co.* v. *Civil Aeronautics Board,* 121 F. 2d 810 (C.A. 2); *National Air Freight Forwarding Corporation* v. *Civil Aeronautics Board,* No. 10630, C.A.D.C., April 10, 1952. Addressing itself to the proposition that Section 408 "applies to cases involving the control of air carriers only where the acquisition of control of a corporate entity occurs at a time when that entity is already an air carrier" (121 F. 2d at 815), the Court of Appeals for the Second Circuit stated (*ibid*):

> This seems to us an unduly literal interpretation of [408(a)(5)]. In our opinion "to acquire control of any air carrier in any manner whatsoever" is to take all steps involved in obtaining control, which in this case would con-

sist in supplying a subsidiary corporation, organized for air carriage and possessing adequate financial resources, with a certificate authorizing operation.

We submit that these prior decisions are correct and that it is the fact of control over an air carrier, and not the time at which control over the corporate entity of the subsidiary is obtained, which is material. As the *Pan American* decision emphasizes, the Board's jurisdiction extends to control over air carriers acquired by persons within the proscribed categories "in any manner whatsoever." Cf. *Aluminum Company of America* v. *Federal Trade Commission,* 284 Fed. 401 (C.A. 3), certiorari denied, 261 U.S. 616. And as the *National Air Freight Forwarding* decision emphasizes (slip opinion, p. 4), ". . . it would be unwise for the Board to close its eyes to the fact that with completion of the certification process, there would be in existence an air-surface carrier control relationship which important segments of the Act were designed to regulate."

B. Even if the Board's interpretation of Section 408 should not be accepted, petitioner would not be entitled to prevail in the circumstances of this case; Judge Prettyman, who disagreed with the majority below on the question of statutory construction just discussed, nevertheless concurred in the result and in all other grounds stated in the majority opinion (R. 758). As his separate opinion serves to emphasize, assuming that a formal approval pursuant to Section 408 was unnecessary petitioner is still no better off. The Board, in de-

termining under Section 401 whether it would be in the public interest to certify an applicant like petitioner, would still have to apply the very criteria which are reflected in Section 408. It would still be bound to consider whether unified control of air and surface media of transportation—a possibility viewed with grave concern by Congress [8]

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[8] Both the language of Section 408 and its legislative history demonstrate a considered judgment by the Congress that the possibility of conflicting interests between air carriers and other specified persons, and the threat of monopoly inherent in the unified control of such conflicting interests, are dangers against which the Board must guard. The second proviso in Section 408 (b) (quoted *supra*, p. 4) reflects particular concern with the danger inherent in unified control of air and surface carriers. The Section also extends, however, to various other control relationships, *e.g.*, mergers between air carriers, or between air carriers and other common carriers, or between air carriers and persons engaged in other phases of aeronautics (408 (a) (1)); the acquisition of control over any citizen of the United States engaged in any phase of aeronautics by any foreign carrier or person controlling a foreign air carrier (408 (a) (4)); the acquisition of control by an air carrier or persons controlling an air carrier over any person engaged in any other phase of aeronautics (408 (a) (6)). Note, also, Section 409 (a) relating to interlocking directorates.

In the Committee hearings on the various bills which later culminated in the Civil Aeronautics Act, particular concern was expressed as to whether the proposed control provisions would permit the growth of monopolies in air transportation. The Committee members were assured that these provisions, modeled after those contained in the Motor Carrier Act, would not permit any such result. See *e.g.*, the exchange of conversation between Senator Truman and Commissioner Eastman on this point. Hearings before a Subcommittee of the Senate Committee on Interstate Commerce on S. 2 and S. 1760, 75th Cong., 1st Sess., p. 333. For similar comments by other witnesses see *ibid.*, pp. 432, 502, 503. The question of whether these control provisions would permit the development of monopolies was the subject of debate in the Senate, and various amendments to the bill reported by the Committee on Commerce were made on the floor to guard further against any such possibility. See 83 Cong. Rec. 6728-6732. 6770.

—would, in the particular circumstances, be consistent with the public interest.[9] Cf. *United States* v. *Rock Island Motor Transit Co.,* 340 U.S. 419, 428, 433-5. Stated in terms of the instant case, the Board would still have been required to take into full account the important fact that Continental Southern, a would-be air carrier, was the creature of a far-flung bus system.

However one reads Section 408—whether one adopts the position of the majority or the separate view of Judge Prettyman—petitioner was bound to show the Board what effects, from the standpoint of the public interest, its control relationships would have on its proposed operations as an air carrier. It was on notice to do so (R. 35-37). And its failure to make an adequate and timely record fully warranted the Board in rejecting its applications.

II

Section 1006 (a) of the Civil Aeronautics Act (*infra,* pp. 22-23) provides for review of Board orders at the instance of a person disclosing a "substantial interest" therein. Petitioner's only interest in the Board's proceedings was that of an applicant, and its right to review of the Board's actions therein is limited to those actions which directly relate to the denial of petitioner's applications. *Simmons* v. *Federal Communications Commission,* 145 F. 2d 578 (C.A. D.C.); *Simmons* v. *Federal*

[9] Petitioner, indeed, concedes (Pet., p. 14) that Section 408 policies "are proper matters for consideration by the Board in appraising the public convenience and necessity . . ."

Communications Commission, 169 F. 2d 670 (C.A. D.C.), certiorari denied, 335 U.S. 846. Petitioner could not have been certificated for the routes in issue because of the deficiencies and uncertainties relating to its case and the need for immediate inauguration of service which petitioner could not meet. The Court of Appeals correctly held that under these circumstances it was not required to pass upon the qualifications of the successful applicants.

CONCLUSION

The decision below is correct, there is no conflict of decision, and no substantial question warranting review by this Court is presented. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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AUGUST, 1952.

APPENDIX

The Civil Aeronautics Act of 1938, 52 Stat. 973, as amended, 49 U.S.C. 401 *et seq.*, provides in part:

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Certificate Required

Sec. 401(a). No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Authority [Board] authorizing such air carrier to engage in such transportation: * * *

* * * * *

Issuance of Certificate

(d)(1) The Authority [Board] shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Authority [Board] hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied.

(2) In the case of an application for a certificate to engage in temporary air transportation the Authority [Board] may issue a certificate authorizing the whole or any part thereof for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provi-

sions of this Act and the rules, regulations, and requirements of the Authority [Board] hereunder.

* * * * *

Transfer of Certificate

(i) No certificate may be transferred unless such transfer is approved by the Authority [Board] as being consistent with the public interest.

* * * * *

Consolidation, Merger, and Acquisition of Control Acts Prohibited

Sec. 408(a) It shall be unlawful, unless approved by order of the Authority [Board] as provided in this section—

(1) For two or more air carriers, or for any air carrier and any other common carrier or any person engaged in any other phase of aeronautics, to consolidate or merge their properties, or any part thereof, into one person for the ownership, management, or operation of the properties theretofore in separate ownerships;

(2) For any air carrier, any person controlling an air carrier, any other common carrier, or any person engaged in any other phase of aeronautics, to purchase, lease or contract to operate the properties, or any substantial part thereof, of any air carrier;

(3) For any air carrier or person controlling an air carrier to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any person engaged in any phase of aeronautics otherwise than as an air carrier;

(4) For any foreign air carrier or person con-

trolling a foreign air carrier to acquire control, in any manner whatsoever, of any citizen of the United States engaged in any phase of aeronautics;

(5) For any air carrier or person controlling an air carrier, any other common carrier, or any person engaged in any other phase of aeronautics, to acquire control of any air carrier in any manner whatsoever;

(6) For any air carrier or person controlling an air carrier to acquire control, in any manner whatsoever, of any person engaged in any phase of aeronautics otherwise than as an air carrier; or

(7) For any person to continue to maintain any relationship established in violation of any of the foregoing subdivisions of this subsection.

Power of Authority [Board]

(b) Any person seeking approval of a consolidation, merger, purchase, lease, operating contract, or acquisition of control, specified in subsection (a) of this section, shall present an application to the Authority [Board], and thereupon the Authority [Board] shall notify the persons involved in the consolidation, merger, purchase, lease, operating contract, or acquisition of control, and other persons known to have a substantial interest in the proceeding, of the time and place of a public hearing. Unless, after such hearing, the Authority [Board] finds that the consolidation, merger, purchase, lease, operating contract, or acquisition of control will not be consistent with the public interest or that the conditions of this section will not be fulfilled, it shall by order, approve such consolidation, merger, purchase, lease, operating contract,

or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe: *Provided,* That the Authority [Board] shall not approve any consolidation, merger, purchase, lease, operating contract, or acquisition of control which would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the consolidation, merger, purchase, lease, operating contract, or acquisition of control: *Provided further,* That if the applicant is a carrier other than an air carrier, or a person controlled by a carrier other than an air carrier or affiliated therewith within the meaning of section 5(8) of the Interstate Commerce Act, as amended, such applicant shall for the purposes of of this section be considered an air carrier and the Authority [Board] shall not enter such an order of approval unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than an air carrier to use aircraft to public advantage in its operation and will not restrain competition.

* * * * *

Judicial Review of Authority's [Board's] Orders

Orders of Authority [Board] Subject to Review

Sec. 1006(a) Any order, affirmative or negative, issued by the Authority [Board] under this Act, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 801 of this Act, shall be subject to review by the circuit courts of appeals of the United

States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

* * * * *

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